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Frances Boval *Widow, surviving Executrix of Rebecca Duffay Widow, deceased; and also Administratrix of the Goods, Chattels, Rights and Credits of William Rushley deceased, not Administred by the said Rebecca Duffay,*  
**APPELLANTS.**

Peter Theobald and Joseph Theobald, *Administrators of the Goods, Chattels, Rights and Credits of John Theobald deceased; not Administred by Ann Theobald Widow, Relict and Administratrix of the said John Theobald,*  
**RESPONDENTS.**

## The APPELLANTS CASE.

655. **T**HOMAS BROKER, Esq; was seized in Fee of a Messuage or Tenement near St. Margaret's Hill in Southwark. and demised the same by Indenture to John Rushley for fifty one Years, at Ten Pounds per Annum Rent, which Lease was assigned to Jeremiah Rushley.

Richard How having purchased the Inheritance of the said Messuage subject to the said Term, made a voluntary Settlement thereof in Trust for himself for Life, Remainder to Richard his Son (then an Infant) in Tail.

77. The said Messuage being burnt by the dreadful Fire in Southwark, was rebuilt by the said Jeremiah Rushley, who petitioned the Commissioners appointed by Act of Parliament to determine Differences about that Fire against the said Richard How, Sen. and Richard How the Infant, who had the Reversion for Satisfaction for such Buildings; whereupon, by Decree of the said Commissioners, the said Term of fifty one Years was encreased and made up ninety nine Years, by adding sixty nine Years and a half to the said Jeremiah Rushley, his Executors, Administrators and Assigns; and by such Decree it was farther ordered, that both the said Richard Hows, when Richard How the Infant came of Age, should execute a sufficient Lease by Indenture for that Purpose.

78. Before any such Lease executed, Jeremiah Rushley made his Will, and thereby devised the Premises to Joan his Wife for her Life, with Power to make Leases for Twenty one Years, at any Fine not exceeding One hundred Pounds, and after her Death to his Nephew William Rushley and his Niece Rebecca Rushley, their Executors, Administrators and Assigns, for the Residue of the Term he had therein, and died in November following, and soon afterwards the said Rebecca married to John Duffay an Alien, who was never naturalized.

That John Theobald, the Respondent Joseph's Intestate, had a Lease by Indenture from Jeremiah Rushley of the said Messuage at a Rack Rent.

87. The said John Duffay and Rebecca his Wife, by Indenture in Consideration of Thirty Pounds therein mentioned to be paid, assigned their Share or Moiety of the Premises to the Respondent Peter Theobald in Trust for the said John Theobald his Brother.

88. William Rushley died in Guinea, and thereupon the said John Duffay and Rebecca Duffay his Wife, by Deed Poll released their other Moiety to the Respondent Peter Theobald in Trust for the said John, in Consideration of Thirty Pounds more mentioned therein to be paid, but neither of the Sums of Thirty Pounds mention'd in either of the said Conveyances appear to have been paid; and the said Rebecca Duffay in her Answer swears, That she believes no more than Five Pounds, part thereof, was ever paid; And to strengthen the Title, the said John Theobald prevailed on the said Duffay and his Wife to renounce their Right of Administration of William Rushley, and thereupon John Theobald obtained Letters of Administration to himself, as the next of Kin to the said William Rushley.

89. The next Year after the last Purchase, John Theobald obtained a Lease from Richard How, Jun. and Alice his Wife (who had a Jointure in the Premises) for Sixty nine Years



Years and a half, from Michaelmas 1706, when the Term of Fifty one Years expired.

25 Nov. 1697

*Joan Rusbley*, the Widow of *Jeremiah Rusbley* (pursuant to her Powers by his Will) leased by Indenture the said Premises to *John Theobald* for Twenty one Years, at Thirty two Pounds *per Annum Rent*, in Consideration of One hundred Pounds Fine paid to her, and died June 15, 1706.

12 Jan. 1705.

The said *John Duffay* died, and the Letters of Administration to the said *William Rusbley's* Personal Estate granted to the said *John Theobald*, appearing to be obtained by Imposition and Fraud, and *George Rusbley*, Brother of the said *William Rusbley*, also returning from Sea, who had an equal Share with the said *Rebecca Duffay* in the said *William Rusbley's* Moiety of the said Lease and Premises, the said Letters of Administration illegally obtained as aforesaid by the said *John Theobald* were duly revoked, and thereupon fresh Letters of Administration (by the said *George Rusbley's* Consent and Direction) were granted to the said *Rebecca Duffay*.

Michaelmas  
Term, 1706.

That the said *Joan Rusbley* and *John Duffay* being dead, she the said *Rebecca*, having obtained as aforesaid the said Letters of Administration, brought her Bill in the Court of Chancery against the Respondent *Peter Theobald* and the Intestate *John Theobald*, setting forth that the said *John Duffay* her late Husband was an Alien, that the said pretended Purchase was made by Fraud, and without any Consideration, and prayed that the said *Theobalds* might be compelled to assign to her the said Premises, and to account with her for the Rents and Profits thereof.

To which Bill the Respondent *Peter*, and the Intestate *John Theobald*, put in their several Answers, and thereby denied that they knew the said *John Duffay* to be an Alien, and insisted on the said Purchase as fair, and for a valuable Consideration, and that they had a Title both at Law and in Equity to the same.

22 Nov. 1707.

The Cause came regularly to be heard before the then Master of the Rolls, where it fully appeared in Proof that the said *John Duffay* was an Alien at and before the Time of either of the said pretended Purchases, and that the said *John Theobald* knew him to be such. And upon the said Hearing it was decreed, that the said *Rebecca* should proceed to try her Title in an Ejectment at the then next *Surry* Assizes, at which the said *John Theobald* was to admit that the Term of Years decreed by the said Commissioners was in Being, and that the said Lease for Twenty one Years, granted by the said *Joan Rusbley*, should not be given in Evidence.

That the said Cause coming to be tried pursuant to the said Decree, the said *John Theobald* gave in Evidence the Lease to him made by the said *Richard How jun.* and *Alice* his Wife, whereby the Plaintiff became Non-suit.

5 March 1708.

The said Cause coming back to the Court of Chancery, his Honour granted a new Trial, and ordered the said *John Theobald* to pay the said *Rebecca's* Costs of the former Trial, for not admitting the Term in Being which was decreed by the said Commissioners, and his Honour ordered the same to be admitted at the next Trial, and that the said Lease from *Joan Rusbley* should not be produced.

1708.

The said Cause coming to be tried at the next *Surry* Assizes, the said *Rebecca Duffay* obtained a Verdict on a full Defence made by the said *John Theobald*, and the Cause coming back to be heard in the said Court of Chancery on the Equity reserved, his Honour was pleased to decree, That the said *Theobalds* should assign *How's* Lease, and deliver the Original Lease to *Rebecca*, and all other Writings in their Custody relating to the Premises. and the said *John Theobald* was to have the Term leased to him by *Joan Rusbley*, and to pay the reserved Rents to *Rebecca*, and to account with her for the same from the Filing of her Bill, with the usual Directions in Decrees to account.

29 Oct. 1709.

That the said *John Theobald* appealed from the said Decree to the then Lord Chancellor, and upon hearing thereof, his Lordship dismissed the said Bill, but without Costs, whereby the said *Rebecca* was left only to her Remedy at Law, Whereupon the said *Rebecca* brought her Action of Debt for Four Years Rent and a half, at Thirty two Pounds *per Annum*, due from the Death of the said *Joan Rusbley*, and reserved by her Lease, and recovered a Verdict against the said *Peter Theobald* for One hundred forty four Pounds, which was the Rent then due, and had Judgment thereon.

That the said Respondent *Peter*, and the Intestate *John Theobald*, exhibited their Bill to be relieved against the last mentioned Verdict; to which the said *Rebecca* put in her Answer: Soon after which the said *John* died Intestate, and Administration of his Goods and Chattels was granted to *Anne Theobald* his Widow, who revived the said Cause.

10 June 1724.

That the said Cause coming to be heard before the then Lord Chancellor, his Lordship proposed, that the Administratrix of *John Theobald* should pay to the said *Rebecca Duffay* Thirty Pound, for the Rents recovered at Law; and that *Rebecca* should release her Title to the Premises, and acknowledge Satisfaction on the Judgment at the Costs of the Administratrix of the said *John Theobald*, and that *Rebecca* should give her Answer thereto in a Week's Time. That the said *Rebecca* not signifying her Consent to accept the said Proposal, his Lordship decreed a perpetual Injunction against the said *Rebecca*, for Stay of her farther Proceedings at Law on the said Judgment, or on any Demand for Rent for the said Premises: And that the Plaintiff be quieted in the Possession of the Premises for the Residue of the said Term of Sixty nine Years against the said *Rebecca*: And that the said *Rebecca* should acknowledge Satisfaction on Record of the said Judgments by her obtained.

17 Nov. 1724.

That



July 1725.

That the said *Rebecca* petitioned the Lords Commissioners for Custody of the Great Seal to rehear the last mentioned Cause, and the same came on to be heard before the present Lord Chancellor July 10. 1725. when his Lordship was pleased to give the Petitioner no Relief thereupon.

July 1726.

That afterwards the said *Rebecca* died, having first duly executed her last Will and Testament, and thereby constituted the Appellant, and *Elizabeth Burrell* Widow, who is since dead, her Executrixes and residuary Legatees; and the Appellant hath obtained Letters of Administration of the Goods, &c. of *William Rusbley*, not administered by her Testatrix the said *Rebecca*.

That the Interest in the Premises in Question being vested in the Appellant, as surviving Executrix and residuary Legatee of the said *Rebecca*; and by the last mentioned Administration of *William Rusbley*, she apprehends her self to be aggrieved by the said Decrees of the 29th of October 1709. and the 17th of November 1724. and of the 10th of July 1725. for the Reasons following.

For that the two Sums of Thirty Pound in each of the said Conveyances mentioned, are not valuable Considerations for the Purchase of the said Premises, in Case the said Sums had been actually paid; it being sworn by the Answer of the said *Rebecca Duffay*, that the said *Joan Rusbley* was about Sixty Years old when she and her Husband is pretended to have sold the Premises, (so could not probably live long) and that the Premises at that Time were worth to be sold, viz. their Reversion thereof, after the Death of the said *Joan Rusbley*, near five Hundred Pound. And *John Theobald* himself having taken a Lease thereof of *Joan Rusbley* at Thirty two Pound per Annum Rent, and paid a Hundred Pound for a Fine for Twenty one Years only, proves plainly that the two Sums of thirty Pound each are no valuable Considerations, being less than two Years Purchase, in Case no Fine had been paid: And she farther swears by her Answer, that the Premises were worth Seventy five Pound per Annum to be lett.

II. For that neither of the said Sums appear to have been overpaid; and it appears by the Respondent's Evidence who was present at the Execution of one of the said Conveyances, that no Purchase Money was paid for the same.

III. For that the said Conveyances being executed in the Life-Time of *Joan Rusbley*, the said *Rebecca's* Interest in the Premises was but a meer Possibility, and was not grantable by her self, in Case she had been unmarried; and therefore she ought not to be bound by her Execution of such Conveyances, in Conjunction with, and under the Power of her Husband.

IV. For that it fully appears in Proof, that the Husband of the said *Rebecca* was an Alien, and therefore could neither take any legal Estate in Lands to his own Use, nor transfer the same to any other Person.

V. For that the Conveyance of the said *John Duffay*, and *Rebecca* his Wife, of the Moiety of the said *William Rusbley* deceased, is absolutely void in Law; because *George Rusbley*, Brother of the said *William Rusbley* was then living, who had the only Right of Administration to the said *William Rusbley*.

VI. For that the Validity of the said Conveyances are properly triable, and have been already tried at Law on the said Ejectment, and Action of Debt for the Rent; and the said *Rebecca* hath prevailed and obtained Verdicts on both the said Tryals; and the said Verdicts ought by the said Decrees of the 29th of October, 1709. and the 17th of November, 1724. and of the 10th of July, 1725. to have been established and confirmed; and the said Decree of the 4th of June, 1709. ought to have been affirmed.

*Wherefore, and for divers other Reasons, the Appellant humbly hopes that the said several Decrees of the 29th of October, 1709. and the 17th of November, 1724. and of the 10th of July, 1725. shall be revers'd, and that the said Decree of his Honour the Master of the Rolls, made the 4th of June, 1709, shall be affirmed, and that your Lordships will be pleased to grant such further Relief in the Premises to the Appellant, as in your Lordships great Wisdom shall seem meet.*

C. TALBOT.  
J. GIRDLER.



of Rebecca Duffay Widow, deceased,  
and also Administratrix of the Goods,  
Chattels, Rights and Credits of Wil-  
liam Ruffley deceased, not admini-  
strated by the said Rebecca Duffay,  
APPELLANTS.

Peter Theobald and Joseph Theobald,  
Administrators of the Goods, Chattels,  
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deceased; not administered by Ann The-  
obald Widow, Relict and Administra-  
trix of the said John Theobald, RE-  
SPONDENTS.

## The APPELLANTS CASE.

To be heard on Monday the 16th of March,  
1729-30.